

# STATE OF CONNECTICUT

## DEPARTMENT OF PUBLIC HEALTH

IN RE: DEPARTMENT OF PUBLIC  
HEALTH V. JOSEPH CHINIGO

PETITION NO. 960620-29-003

### FINAL MEMORANDUM OF DECISION

An administrative hearing was held in this matter on October 16, November 8, November 26, and December 23, 1996. Hearing Officer Linda J. Mead rendered a Proposed Memorandum of Decision on March 20, 1997.

An Objection to Proposed Memorandum of Decision ("Objection") was filed on behalf of Joseph Chinigo, Massage Therapist ("Respondent") on April 4, 1997. On April 14, 1997, pursuant to the provisions of Connecticut General Statutes §19a-2a, Commissioner Stephen A. Harriman designated this Hearing Officer to render a final decision upon review of the entire record.

After full consideration of the Respondent's Objection and the record, and in accordance with Connecticut General Statutes §4-179, the undersigned hereby adopts the Proposed Memorandum of Decision of Hearing Officer Mead as the final decision in this matter, with the modifications provided below.

Specifically, on page 15, the Proposed Order is replaced by the following:

#### ORDER

Based on the record in this case, the above findings of fact and conclusions of law, the undersigned orders the following in this case against Joseph Chinigo, Petition No. 960620-29-003, massage therapy license number 001030:

1. This Hearing Officer finds the misconduct regarding the First, Second and Third Counts of the Amended Statement of Charges is severable and each specified offense warrants the disciplinary action imposed. As to each of the First, Second and Third Counts, the Respondent's massage therapy license is hereby revoked.
2. This Order is effective as of the date of signature.



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A copy of the Proposed Memorandum of Decision is attached hereto and incorporated herein.

May 15, 1997  
Date

Catherine A. Hess  
Catherine A. Hess, Hearing Officer  
Adjudications, Office of Special Services



# STATE OF CONNECTICUT

## DEPARTMENT OF PUBLIC HEALTH

### ADJUDICATIONS - OFFICE OF SPECIAL SERVICES

TO: Judith P. Lederer, Staff Attorney

FROM: Kathie J. Pirolo, Hearings Liaison *KJP*

DATE: May 19, 1997

RE: **Joseph Chinigo, Massage Therapist - Petition No. 960620-29-003**

#### NOTICE TO FINAL MEMORANDUM OF DECISION

The Proposed Memorandum of Decision is hereby adopted as the Final Memorandum of Decision, with modifications.

NOTE: Two paragraphs on pages twelve and thirteen contain references to evidence that was introduced during Executive Session of the hearing. These paragraphs have been redacted from the Proposed Memorandum of Decision and have been placed under seal. They are confidential and shall not be released to the public.

c: Joseph Chinigo  
c/o Alys Portman Smith, Esquire  
Skelley Rottner, P.C.  
P.O. Box 340890, Hartford, Connecticut 06134-0890

Marianne Horn, Assistant Attorney General  
Stephen A. Harriman, Commissioner, DPH  
✓ Debra J. Tomassone, Section Chief, L&R  
Debra L. Johnson, Health Program Supervisor  
Linda Mead, Hearing Officer  
Catherine Hess, Hearing Officer  
Bonnie Pinkerton, Nurse Consultant  
Cynthia Denne, Director, DHSR

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# STATE OF CONNECTICUT

## DEPARTMENT OF PUBLIC HEALTH

Joseph Chinigo, Massage Therapist  
21 Charlotte Drive  
Plainfield, Connecticut 06374

Petition No. 960620-29-003

### **REDACTED** **PROPOSED MEMORANDUM OF DECISION**

#### **PROCEDURAL BACKGROUND**

The Department of Public Health ("Department") issued a Statement of Charges against Joseph Chinigo, Massage Therapist ("Respondent") dated July 25, 1996. (Department Exhibit 1). The Statement of Charges alleged in two counts that the Respondent engaged in conduct of a sexual nature with certain named female patients and failed to maintain appropriate boundaries between himself and these patients and that this conduct constituted grounds for disciplinary action pursuant to Connecticut General Statutes §20-206c.

The Department presented the Commissioner of the Department of Public Health ("Commissioner") with a Motion for Summary Suspension dated July 25, 1996, stating that on the Department's information and belief the continued practice of massage therapy by the Respondent represented a clear and immediate danger to the public health and safety. The Summary Suspension Order, ordering the Respondent's license to practice massage therapy be summarily suspended pending a final determination of the allegations contained in the Statement of Charges, was signed by the Commissioner on August 1, 1996. (Department Exhibit 1).

On August 9, 1996, the Commissioner appointed this Hearing Officer to hear this case and to recommend findings of fact and conclusions of law and to issue a proposed order upon the conclusion of the hearing. (Hearing Officer Exhibit 1).



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The Department served the Notice of Hearing and the Statement of Charges on the Respondent by certified mail, return receipt requested. (Department Exhibit 1). The Respondent submitted an Answer to the Statement of Charges on September 18, 1996. (Respondent Exhibit A). At the hearing on November 8, 1996, the Department offered an Amended Statement of Charges which added a third count. (Department Exhibit 3; Transcript 11/8/96 pp. 3, 6-7). There was no objection to the amendment by the Respondent. (Transcript 11/8/96 p. 7).

The administrative hearing was held on October 16, November 8, November 26 and December 23, 1996. It was held in accordance with Chapter 54, Section 19a-2a, and Section 19a-14(c) of the Connecticut General Statutes; and Section 19-2a-1, et seq. of the Regulations of Connecticut State Agencies. The Respondent appeared with his attorney, Alys Portman Smith, Esq., of Hartford, Connecticut. Judith P. Lederer, Esq., represented the Department. Both the Department and the Respondent presented evidence and conducted cross-examination of witnesses.

The Proposed Final Decision is based entirely on the record and sets forth this Hearing Officer's recommended findings of fact and conclusions of law and a proposed order.

### **ALLEGATIONS<sup>1</sup> AND ANSWER**

In paragraphs 1, 6 and 11 of the Amended Statement of Charges, the Department alleged that the Respondent is, and has been at all times referenced in the Statement of Charges, the holder of Connecticut massage therapy license number 001030.

The Respondent admitted the allegations in paragraphs 1 and 6. Because the allegations in paragraph 11 are exactly the same as in paragraphs 1 and 6, paragraph 11 is deemed admitted also. (Respondent Exhibit A).

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<sup>1</sup> The allegations are contained in Department Exhibit 3.

**With Regard to the First Count**

In paragraph 2 of the Amended Statement of Charges, the Department alleged that between August and October of 1995, the Respondent provided massage therapy to a female patient S.W.

The Respondent admitted that between August 2, 1995 and April 12, 1996, he provided massage therapy to female patient S.W. (Respondent Exhibit A).

In paragraphs 3-5, the Department alleged that during the time period specified in paragraph 2, that the Respondent engaged in conduct of a sexual nature with S.W. during S.W.'s sessions, on at least two occasions; that the Respondent failed to maintain appropriate professional boundaries between himself and S.W.; and that the above described facts constituted grounds for disciplinary action pursuant to Connecticut General Statutes §20-206c.

The Respondent denied the allegations in paragraphs 3-5 in their entirety. (Respondent Exhibit A).

**With Regard to the Second Count**

In paragraph 7 of the Amended Statement of Charges, the Department alleged that between approximately August of 1995 and November of 1995, the Respondent provided massage therapy to female patient M.W.

The Respondent admitted that between August 9, 1995 and January 17, 1996, he provided massage therapy to female patient M.W. (Respondent Exhibit A).

In paragraphs 8-10, the Department alleged that during the time period specified in paragraph 7, that the Respondent engaged in conduct of a sexual nature with M.W. during M.W.'s sessions, on at least three occasions; that the Respondent failed to maintain appropriate professional boundaries between himself and M.W.; and that the

above described facts constituted grounds for disciplinary action pursuant to Connecticut General Statutes §20-206c.

The Respondent denied the allegations in paragraphs 8-10 in their entirety. (Respondent Exhibit A).

### **With Regard to the Third Count**

In paragraph 12 of the Amended Statement of Charges, the Department alleged that between sometime in 1995 until June of 1996, the Respondent provided massage therapy to patient Jane Doe.

The Respondent admitted that between May 1, 1995 and June 10 or 11, 1996, he provided massage therapy to female patient Jane Doe. (Respondent Exhibits G & H; Transcript 11/8/96 pp. 3-4; Transcript 11/26/96 pp. 90-92).

In paragraphs 13-15, the Department alleged that during the time period specified in paragraph 12, that the Respondent engaged in conduct of a sexual nature with Jane Doe during Jane Doe's sessions, on at least three occasions; that the Respondent failed to maintain appropriate professional boundaries between himself and Jane Doe; and that the above described facts constituted grounds for disciplinary action pursuant to Connecticut General Statutes §20-206c.

The Respondent denied that he had ever had sexual intercourse with Jane Doe. (Transcript 11/26/96 pp. 99-100).

## **PROCEDURAL MATTERS**

### **1. Respondent's Motion for Reinstatement of Massage Therapy License**

The Respondent submitted a Motion for Reinstatement of Massage Therapy License, dated October 30, 1996, claiming that the alleged violations of §20-206c did not involve a clear and immediate danger to the public health, safety or welfare of the citizens of

Connecticut; that the Respondent had been left without any ability to earn an income for his family during the pendency of the proceedings; and that the Respondent was willing to practice massage therapy with an independent observer in attendance at all massage therapy sessions until a final determination in this matter has been reached.

The Department's Motion in Opposition to Reinstatement of Respondent's License, dated November 4, 1996, argued that it was not true that there was no clear and immediate danger if the Respondent was to be reinstated; that the Respondent's present employment situation was not the focus of determining whether his license to work as a massage therapist should be reinstated; and that there was no way to adequately monitor supervision by a third party observer, therefore the summary suspension needed to remain in place during the pendency of these proceedings.

This Hearing Officer advised the Commissioner on November 6, 1996, that there had been nothing presented during the hearing on October 16, 1996, that would necessitate a change in the Commissioner's original finding upon which the Summary Suspension Order was based. On November 7, 1996, the Commissioner issued a Final Ruling on Motion for Reinstatement of Massage therapy License denying the Respondent's motion.

## **2. Respondent's Subpoena Duces Tecum of Mental Health Records**

On November 5 and 6, 1996, the Respondent issued subpoenas duces tecum to several people to appear on November 8, 1996. Prior to the hearing, the Respondent excused all the subpoenaed people except "Janet Smith, Ph.D." and "Jessie Kessler, Therapist," who had provided counseling to S.W. and M.W. respectfully. (Transcript 10/16/96 pp. 52, 96; Transcript 11/8/96 pp. 9, 15).

At the hearing on November 8, 1996, the Respondent requested a ruling that the mental health records of S.W. and M.W. would be admissible, claiming that S.W. and M.W. had waived their rights to privileged communication when they put their



psychological conditions in issue within the complaints that they brought against the Respondent. The Respondent argued that Connecticut General Statutes §52-146c(c) allowed for an exception to the privileged communication between a psychologist and client and asked for an *in camera* inspection of the mental health records of S.W. and M.W. to determine if the records supported their testimony.

The Department opposed the admission of the mental health records, arguing that releases from S.W. and M.W. were necessary before testimony from the therapists and the mental health records generated by the therapy, could be heard or viewed. The Department insisted that §52-146c(c) did not apply because neither S.W. nor M.W. had introduced her psychological condition as an element of a claim or defense and that this hearing was administrative and not a "civil proceeding." (Transcript 11/8/96 pp. 8-19).

At the November 8, 1996 hearing, it was agreed that the two mental health providers would be released pending a ruling by the Hearing Officer. (Transcript 11/8/96 pp. 12, 20). This Hearing Officer issued a ruling on November 25, 1996, refusing to order the testimony of Janet Smith or Jessie Kessler or order the opening of the mental health records on either S.W. or M.W. (Hearing Officer Exhibit 2).

### **3. Respondent's Subpoena Duces Tecum of Telephone Records**

On November 15, 1996, the Respondent issued a subpoena duces tecum to Southern New England Telephone ("SNET") to appear on November 26, 1996 with the entire files for eleven telephone numbers for the period of July 1, 1995 to either June 1996 (for one of the telephone numbers) or to the present (for the remaining ten telephone numbers.)<sup>2</sup>

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<sup>2</sup> The subpoena duces tecum to SNET was for all local and long-distant telephone calls and documentation regarding payment on the telephone accounts for Jane Doe (two telephone numbers), EASTCONN (one telephone number), S.W. (one telephone number), M.W. (one telephone number), Electric Boat (three telephone numbers) and EG & G Washington Analytical Services (three telephone numbers.)

The Department submitted a Motion to Quash Subpoena on November 22, 1996, arguing that the documents requested could not be reasonably calculated to lead to evidence admissible in the proceeding and could be clearly seen as an attempt to harass the complainants as well as their spouses, employers and former employers. In addition, the Department argued that the subpoena was overbroad on its face and sought to obtain material far beyond the scope of the hearing. The Department filed a Memorandum in Support of Department's Motion to Quash with its motion.

The Respondent submitted an Opposition to Motion to Quash Subpoena, dated November 25, 1996, arguing that there was evidence, yet to be presented, that indicated that the Respondent was "set-up" by another person. The Respondent argued that the telephone records of SNET might show communications between the person who wanted to "set-up" the Respondent and the three complaining witnesses, as well as amongst the three complainants. In his attached Memorandum of Law in Support of Respondent's Opposition to Motion to Quash Subpoena, the Respondent stated he had no objection to an *in camera* inspection of the records to be done on a date other than the hearing date.

At the hearing on November 26, 1996, this Hearing Officer requested the Respondent provide an offer of proof as to the relevancy of the SNET telephone records. The Respondent claimed that there was an out-of-state witness who would willingly testify that a third person had asked her to "set-up" the Respondent by claiming inappropriate sexual contact during massage therapy sessions. The Respondent believed that this third person may have been responsible for a scheme to have his clients make false claims against him. Therefore, the Respondent argued that it was critical to his defense to find out if there were communications made through the telephone lines. This Hearing Officer ruled that testimony from this out-of-state witness was necessary to establish that these subpoenaed telephone records could be relevant. Since this witness would not be returning to Connecticut until December 22, 1996, the hearing was continued until December 23, 1996. (Transcript 11/26/96 pp. 3-11, 173-180).

The out-of-state witness testified at the hearing on December 23, 1996, claiming that she was approached by the Respondent's wife's brother who asked her to help him "set-up" the Respondent by claiming the Respondent made sexual advances toward her. This witness testified that the Respondent's brother-in-law's stated motive was to have his sister divorce the Respondent. (Transcript 12/23/96 pp. 12-15). After hearing this testimony, this Hearing Officer allowed the production of the SNET telephone records, pursuant to the subpoena duces tecum, for inspection by the Respondent. If a possible connection was found between the brother-in-law and any of the three complainants or amongst the three complainants, the Respondent could then present that information, subject to the Department's rights to object, to the Hearing Officer. After reviewing the telephone records, the Respondent stated that no connection could be made. The telephone records were not offered as evidence. (Transcript 12/23/96 pp. 31-41).

#### **4. Polygraph Examination**

The Respondent attempted to offer evidence of the results of a polygraph examination that he had taken. The Department objected to any evidence concerning polygraphs, arguing that the Connecticut courts have found results of polygraph tests to be inadmissible due to their questionable accuracy. The Respondent argued that the case law relied upon by the Department were criminal cases and that because this was an administrative hearing he had the right to present a defense by offering any reliable evidence. After reviewing State v. Plourde, 208 Conn. 455 (1988); State v. Miller, 202 Conn. 463 (1987); State v. Porter, 39 Conn. App. 800 (1995), cert. granted, 236 Conn. 908 (1996); and State v. Barnes, 27 Conn. App. 713, cert. denied, 223 Conn. 914 (1992), this Hearing Officer ruled that the polygraph evidence would not be allowed.

#### **FINDINGS OF FACT**

1. The Respondent has been a massage therapist, holding Connecticut massage therapy license number 001030, at all times from August 1994 until August 1, 1996. During this time, the Respondent practiced massage therapy within the state of

Connecticut. (Department Exhibit 1; Respondent Exhibit A; Transcript 11/8/96 pp. 108-109, 112).

2. The Respondent's massage therapy license number 001030 was summarily suspended by the Commissioner on August 1, 1996. (Department Exhibit 1).

3. The patients in this case are referred to as S.W., M.W. and Jane Doe. These patients are female and have been identified for the Respondent. (Department Exhibit 1; Respondent Exhibits B-E, G & H; Transcript 11/8/96 pp. 3-4, 23-24).

#### **With Regard to the First Count**

4. Between August 2, 1995 and October 25, 1995 and on April 12, 1996, the Respondent provided massage therapy to patient S.W. (Respondent Exhibits A-C, H).

5. During the massage therapy sessions, the Respondent told S.W. that he had a bad marriage and that he was thinking of leaving it. (Transcript 10/16/96 pp. 11, 14, 56).

6. On September 20, 1995, the Respondent engaged in sexual intercourse with S.W. during S.W.'s massage therapy session. (Department Exhibit 1; Transcript 10/16/96 pp. 15-16, 35-39, 57, 60-61, 64-65; Transcript 11/26/96 p. 15).

7. On October 18, 1995, the Respondent engaged in sexual intercourse with S.W. during S.W.'s massage therapy session. (Department Exhibit 1; Transcript 10/16/96 pp. 22-24; Transcript 11/26/96 p. 15).

8. On April 12, 1996, S.W. asked the Respondent for clarification of their relationship and the Respondent told S.W. that he loved his wife. (Transcript 10/16/96 pp. 27-29).

9. Engaging in sexual intercourse with a patient during a massage therapy session is below the standard of care for massage therapists in Connecticut. (Department Exhibit 4; Transcript 11/8/96 pp. 68, 80; Transcript 11/26/96 pp. 130-131).

**With Regard to the Second Count**

10. Between August 9, 1995 and January 17, 1996, the Respondent provided massage therapy to patient M.W. (Respondent Exhibits A, D-E, H).

11. On October 27, 1995, the Respondent engaged in sexual intercourse with M.W. during M.W.'s massage therapy session. (Department Exhibit 1; Transcript 10/16/96 pp. 84-86, 130, 135-136).

12. On November 8, 1995, the Respondent engaged in sexual intercourse with M.W. during M.W.'s massage therapy session. (Department Exhibit 1; Transcript 10/16/96 pp. 90-94).

13. On November 15, 1995, the Respondent engaged in sexual intercourse with M.W. during M.W.'s massage therapy session. (Department Exhibit 1; Transcript 10/16/96 p. 98).

14. Engaging in sexual intercourse with a patient during a massage therapy session is below the standard of care for massage therapists in Connecticut. (Department Exhibit 4; Transcript 11/8/96 pp. 68, 80; Transcript 11/26/96 pp. 130-131).

**With Regard to the Third Count**

15. Between May 1, 1995 and June 10 or 11, 1996, the Respondent provided massage therapy to patient Jane Doe. (Respondent Exhibits G & H; Transcript 11/26/96 pp. 90-91).

16. Although when she first started massage therapy, the Respondent told Jane Doe that he was happily married, as time went on he told her that he was unhappy and was going to get a divorce. (Transcript 11/8/96 pp. 26, 28-29, 31, 40, 57).

17. During March and April of 1996, the Respondent engaged in sexual intercourse with Jane Doe at least three times, always during Jane Doe's massage therapy sessions. (Transcript 11/8/96 pp. 30-34).

18. In the month of April 1996, the Respondent told Jane Doe that his marriage was getting better. (Transcript 11/8/96 pp. 35, 54, 57).

19. Engaging in sexual intercourse with a patient during a massage therapy session is below the standard of care for massage therapists in Connecticut. (Department Exhibit 4; Transcript 11/8/96 pp. 68, 80; Transcript 11/26/96 pp. 130-131).

#### **DISCUSSION AND CONCLUSIONS OF LAW**

Regarding the issue of the proper burden of proof to be applied in this case, this Hearing Officer has determined that the Department bears the burden of proof by a fair preponderance of the evidence. Swiller v. Commissioner of Public Health & Addiction Services, Superior Court, Judicial District of Hartford-New Britain at Hartford, Docket No. CV 950705601 (15 Conn. L. Rptr. No. 16, 532 (January 29, 1996)).

Connecticut General Statutes §20-206c provides in pertinent part:

The department may take any action set forth in section 19a-17 if a person issued a license pursuant to section 20-206b fails to conform to the accepted standards of the massage therapy profession, including, but not limited to, the following: . . . negligent, incompetent or wrongful conduct in professional activities . . . .

The Department sustained its burden of proof with regard to the allegations that the Respondent engaged in sexual intercourse with S.W., M.W. and Jane Doe during their massage therapy sessions. S.W., M.W., and Jane Doe all provided credible and convincing testimony that the Respondent had sexual intercourse with them during their massage therapy sessions. Not only were the individual complainants credible while giving their individual testimony, but their accounts of the Respondent's actions and discussions with them of intensely personal information were remarkably consistent one with another. While the Respondent attempted to undermine the credibility of S.W., M.W. and Jane Doe with his own versions of what transpired at the massage therapy sessions, he was not credible.

THE FOLLOWING TWO PARAGRAPHS CONTAIN REFERENCES TO EVIDENCE THAT WAS INTRODUCED DURING EXECUTIVE SESSION OF THE HEARING. THESE PARAGRAPHS HAVE BEEN REDACTED FROM THE PROPOSED MEMORANDUM OF DECISION AND HAVE BEEN PLACED UNDER SEAL. THEY ARE CONFIDENTIAL AND SHALL NOT BE RELEASED TO THE PUBLIC.

[illegible]

[REDACTED]

END OF CONFIDENTIAL MATERIAL.

It was established that engaging in sexual intercourse with a patient during a massage therapy session is below the standard of care for massage therapists in Connecticut through both the testimony of William Greenberg, Massage Therapist, the Department's expert and the Code of Ethics for Massage Therapists. This Hearing Officer has found that the Respondent engaged in sexual intercourse with three of his patients during massage therapy sessions. Consequently, this Hearing Officer concludes that the Respondent engaged in negligent, incompetent and wrongful conduct in his professional activities and by this conduct has violated Connecticut General Statutes §20-206c.

Connecticut General Statutes §19a-17(a)(1) provides in pertinent part:

Disciplinary action by department . . . . (a) . . . [T]he Department of Public Health with respect to professions under its jurisdiction which have no board or commission may take any of the following actions, singly or in combination, based on conduct which occurred



prior or subsequent to the issuance of a permit or a license upon finding the existence of good cause: (1) Revoke a practitioner's license or permit; . . . (6) Assess a civil penalty of up to ten thousand dollars: . . . .<sup>3</sup>

The Respondent's conduct of engaging in sexual intercourse with three of his patients during massage therapy sessions demonstrates a significant breach of the standard of care for massage therapists in Connecticut. Allowing the Respondent to continue to practice massage therapy would present a danger to the public health and safety.

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Connecticut General Statutes §19-14(c) provides in pertinent part:

Powers of department concerning regulated professions.

(c) No board shall exist for the following professions which are licensed or otherwise regulated by the Department of Public Health: . . . (11) Massage therapist. . . . The department shall assume all powers and duties normally vested with a board in administering regulatory jurisdiction over said professions. The uniform provisions of this chapter and [chapter 384a, Massage Therapists], including but not limited to . . . grounds for professional discipline; receiving and processing complaints; and disciplinary sanctions, shall apply, except as otherwise provided by law, to the professions listed in this subsection.

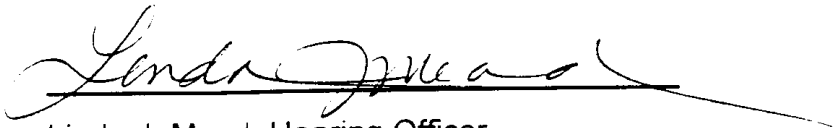
**PROPOSED ORDER**

Based on the record in this case, the above findings of fact and conclusions of law, the Commissioner orders the following in this case against Joseph Chinigo, Petition 960620-29-003, Massage Therapy License 001030:

The Respondent's license to practice massage therapy is revoked. The Respondent shall send all copies of his license to:

Bonnie Pinkerton  
Department of Public Health  
410 Capitol Avenue MS# 12 LEG  
P.O. Box 340308  
Hartford, CT 06134-0308

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Linda J. Mead", is written over a horizontal line.

Linda J. Mead, Hearing Officer  
Department of Public Health

March 20, 1997